

Message Text

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TO AMEMBASSY ACCRA PRIORITY

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E.O. 11652: N/A

TAGS: ETRD, US, GH

SUBJ: VOLTA ALUMINIUM COMPANY LIMITED (VALCO) EXIM CREDIT 5431

1. PLEASE SEND FOLLOWING MESSAGE TO DR. ASANTE SOONEST:
2. QUOTE DR. S.K.B. ASANTE, DEPUTY ATTORNEY GENERAL, ACCRA, GHANA, DEAR DR ASANTE: QUOTE WE HAVE NOW HAD AN OPPORTUNITY TO REVIEW CHANGES IN THE SECOND AMENDMENT TO GUARANTEE AGREEMENT SUGGESTED BY YOUR AUGUST 21, 1975, LETTER, WHICH WERE DISCUSSED ON YOUR RECENT VISIT TO WASHINGTON. QUOTE THE NET EFFECT OF THE SUGGESTED CHANGES IS TO LIMIT THE SCOPE OF EVENTS OF GUARANTEE, AS DEFINED IN THE AGREEMENT, BY THE APPLICATION OF LANGUAGE SIMILAR TO THAT USED IN OPIC GUARANTEES EXTENDED TO UNITED STATES INVESTORS. QUOTE AS WE HAVE POINTED OUT, THE PROVISIONS OF OPIC'S GUARANTEES TO U. S. INVESTORS DO NOT PROVIDE AN APT BASIS FOR COMPARISON WITH YOUR GOVERNMENT'S UNDERTAKING TO EXIMBANK BECAUSE OF SIGNIFICANT DIFFERENCES BETWEEN THE TERMS, PURPOSES, AND RELATIONSHIPS OF THE PARTIES INHERENT IN THE RESPECTIVE GUARANTEES. QUOTE MORE PARTICULARLY, THE BASIC PREMISE OF EXIMBANK'S RELIANCE ON YOUR GOVERNMENT'S GUARANTEE IS THAT
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OCCURRENCE OF ANY OF THE EVENTS OF GUARANTEE WILL IMPAIR OR

DESTROY EXIMBANK'S ASSURANCE OF REPAYMENT FROM VALCO OR ITS PROPERTY. UNDER SUCH CIRCUMSTANCES, WE WOULD LOOK TO YOUR GOVERNMENT'S ASSURANCE OF REPAYMENT WHETHER YOUR GOVERNMENT'S ACTION WAS PROVOKED BY ACTIONS OF VALCO OR FOR ANY OTHER REASON BEYOND THE CONTROL OF EXIMBANK. QUOTE EXIMBANK WOULD CONSIDER IT PRESUMPTIOUS OF IT TO QUESTION YOUR GOVERNMENT'S REASONS FOR THE EXERCISE OF ITS SOVEREIGN RIGHTS. BY THE SAME TOKEN, WE DO NOT BELIEVE THAT YOUR GOVERNMENT SHOULD ASSIGN THE REASON FOR ITS ACTION AS A MEANS OF AVOIDING ITS UNDERTAKING TO EXIMBANK. QUOTE EXIMBANK CONSIDERS THAT THE OCCURRENCE OF AN EVENT OF GUARANTEE WOULD SERIOUSLY JEOPARDIZE REPAYMENT OF ITS LOAN UNLESS YOUR GOVERNMENT WERE PREPARED TO GUARANTEE THAT LOAN. EXIMBANK ALSO CONSIDERS ALL OF THESE EVENTS OF GUARANTEE AS ACTS CLEARLY WITHIN THE CONTROL OF YOUR GOVERNMENT. THEREFORE, WE DO NOT BELIEVE THAT ANY OF THESE EVENTS SHOULD BE ALTERED IN ANY SUBSTANTIVE RESPECT. HOWEVER, IF YOUR GOVERNMENT BELIEVES CLARIFICATION OF THE TERMS QUOTE NATIONALIZATION UNQUOTE OR QUOTE EXPROPRIATION UNQUOTE IS NECESSARY, WE WOULD BE PREPARED TO CONSIDER LANGUAGE SIMILAR TO THAT USED TO DEFINE QUOTE INTERVENTION UNQUOTE IN THE MASTER AGREEMENT. QUOTE WE HOPE THIS MATTER CAN BE RESOLVED AT AN EARLY DATE SO THAT THE FINANCING FOR THE FIFTH POTLINE MAY PROCEED. QUOTE SINCERELY, JOSEPH H. GAINER, COUNSEL, EXPORT-IMPORT BANK OF THE UNITED STATES
END QUOTE. INGERSOLL

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